

July 31, 2023

CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

EXECUTIVE SUMMARY

ALL COUNTY LETTER NO. 23-64

The purpose of this All County Letter is to engage, support, and assist county child welfare services agencies with Indian Child Welfare Act (25 United States Code section 1901 et seq.) implementation of the amendments to the California Welfare and Institutions Code provisions made under Assembly Bill 3176 (Chapter 833, Statutes of 2018). This letter is a follow-up to All County Letter No. 20-38, which indicated the California Department of Social Services would release further policy and best practice guidance and additional support. This letter is the second in a series devoted to this topic and will focus on emergency removals and emergency placements.



KIM JOHNSON
DIRECTOR

CALIFORNIA HEALTH & HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES
744 P Street • Sacramento, CA 95814 • www.cdss.ca.gov



GAVIN NEWSOM
GOVERNOR

July 31, 2023

ALL COUNTY LETTER NO. 23-64

TO: ALL COUNTY CHILD WELFARE DIRECTORS
ALL EMERGENCY RESPONSE STAFF
ALL CHILD WELFARE SERVICES PROGRAM MANAGERS
ALL CHIEF PROBATION OFFICERS
ALL CDSS REGIONAL OFFICES

SUBJECT: SAFETY ASSESSMENT, EMERGENCY REMOVAL AND
EMERGENCY PLACEMENT OF INDIAN CHILDREN

REFERENCE: [WELFARE AND INSTITUTIONS CODE SECTIONS 224.1, 224.2, 224.3, 290.1, 305.5 \(b\)\(c\); 306, 306.6, 309, 315, 319, 319.4, 361.3, 361.31, 361.4, 361.45, 602, 628.1, 636, 727.05, 827, 10553.12, AND 16010.7;](#)
[CHILD WELFARE SERVICES MANUAL OF POLICIES AND PROCEDURES DIVISION 31 REGULATIONS;](#)
[ALL COUNTY LETTER NO. 14-15;](#)
[ALL COUNTY LETTER NO. 17-28;](#)
[ALL COUNTY LETTER NO. 17-107;](#)
[ALL COUNTY LETTER NO. 18-140;](#)
[ALL COUNTY LETTER NO. 19-26;](#)
[ALL COUNTY LETTER NO. 19-71;](#)
[ALL COUNTY LETTER NO. 20-38;](#)
[ALL COUNTY LETTER NO. 22-33;](#)
[ALL COUNTY LETTER NO. 23-46;](#)
[ALL COUNTY INFORMATION NOTICE NO. I-40-10;](#)
[SENATE BILL 678 \(CHAPTER 838, STATUTES OF 2006\);](#)
[ASSEMBLY BILL 2247 \(CHAPTER 674, STATUTES OF 2018\);](#)
[ASSEMBLY BILL 3176 \(CHAPTER 833, STATUTES OF 2018\);](#)
[ASSEMBLY BILL 2944 \(CHAPTER 104, STATUTES OF 2020\);](#)
[SENATE BILL 354 \(CHAPTER 687, STATUTES OF 2021\);](#)
[TITLE 25 UNITED STATES CODE CHAPTER 21 SECTIONS 1901 ET SEQ;](#)
[2023 CALIFORNIA RULES OF COURT](#)

The purpose of this All County Letter (ACL) is to engage, support, and assist county child welfare services (CWS) agencies with Indian Child Welfare Act (ICWA) ([25 United States Code \(USC\) sections 1901 et seq.](#)) implementation of the amendments to the California Welfare and Institutions Code (WIC) provisions made under [Assembly Bill \(AB\) 3176](#) (Chapter 833, Statutes of 2018). This ACL is a follow-up to [ACL No. 20-38](#), which indicated the California Department of Social Services (CDSS) would release further policy and best practice guidance and additional support. This letter is the second in a series devoted to this topic and will focus on emergency removals and emergency placements.

BACKGROUND

The ICWA was enacted in 1978 to prevent the breakup of Indian families and to protect the best interests of Indian children, their families, and tribes. However, the implementation and interpretation of ICWA has been inconsistent across states, creating significant gaps in protection and increasing the number of Indian children in care. As a result, the Bureau of Indian Affairs (BIA) promulgated regulations to address the need for consistent interpretation and implementation of the minimum Federal standards ICWA provides to ensure that all Indian children and their families receive the same rights and protections across all states. The ICWA establishes minimum standards for state court proceedings including dependency, juvenile justice, probate guardianship, and adoption proceedings involving Indian children when the proceeding may result in a voluntary or involuntary placement or adoption of the Indian child. With the passage of [AB 3176](#) (Chapter 833, Statutes of 2018), effective January 1, 2019 and [AB 2944](#) (Chapter 104, Statutes of 2020), effective January 1, 2021, California has enacted its own Indian child welfare laws, which incorporate and expand upon the minimum federal standards contained in the ICWA itself as clarified by the BIA in 2016. Thus, California statutes dictate that county CWS agencies and probation departments have a responsibility to understand and meet ICWA standards in order to ensure the safety of California's Indian children and help Indian children remain safely in, or return to, their homes whenever possible.

The CDSS is releasing a series of ACLs as a follow-up to [ACL No. 20-38](#), which indicated the CDSS would release further policy and best practice guidance to provide additional support for implementing AB 3176. The series of ACLs provide additional details and guidance to expand upon the policies outlined in [ACL No. 20-38](#), which include:

- Inquiry/Further Inquiry/Reason to Believe/Reason to Know/Notice ([ACL No. 23-46](#))
- Emergency Removals/Emergency Placement/Placement Preferences
- Active Efforts

- Voluntary/Involuntary Proceedings
- Qualified Expert Witness
- Jurisdiction

This ACL will be focused on emergency removal and emergency placement requirements as well as placement preferences.

SAFETY ASSESSMENT

Prior to any emergency removal, the CWS social worker must conduct a safety assessment. When it is known, or there is reason to know, the child is an Indian child¹, active efforts shall be made to maintain the child with their family. This should include consulting, partnering, and collaborating with the child's tribe² when conducting the safety assessment to identify necessary supports and services to help the family. ([CWS Manual of Policies and Procedures \(MPP\) section 31-127.12.](#)) This collaboration ensures the prevailing social and cultural standards and way of life of the Indian child's tribe are taken into account from initial contact, including but not limited to all aspects of decision-making. In addition, it is important to identify connections with culturally responsive services, particularly those the family may already have access to within the tribal community. This allows for the county social worker to include tribal representatives when providing early intervention services, including the initiation and development of a safety plan by the social worker, as these representatives may be able to provide relevant information that would otherwise be unknown to the county social worker. These active efforts should be documented in detail, in the case record.

In situations where the active efforts provided to the child and family are not successful, and it is clear the child continues to face an immediate safety threat, emergency removal may be the necessary intervention to ensure the safety of the child. The social worker must document in the case record that active efforts were unsuccessful and the reasons why. ([MPP § 31-135.233.](#))

SAFETY PLAN DEVELOPMENT

When an immediate safety threat has been identified during the completion of a safety assessment, the social worker shall develop a safety plan with the family and the tribe, if they have determined the parents or caregivers possess the protective capacity to mitigate the identified safety threat and they have the support of a safety network. The purpose of the safety plan is to safely keep the child at home with additional supports

¹ All references to child or children is in reference to the child where there is reason to know the child is or may be an Indian child.

² The BIA publishes annually in the [Federal Register](#) a list of designated tribal ICWA agents that can be used to contact individual tribes for further inquiry. This information is also available on the BIA [website](#).

and prevent removal. Although there are situations where emergency removal is necessary, a thoughtfully developed safety plan may be effective to mitigate the need for removal, support the family, and maintain cultural connections and family bonds. Safety plans, in the case of an Indian child, are an important component of active efforts. In addition to the Indian child's parents and/or Indian custodian, safety plan development should include external support and should include the extended family³ and must include, whenever possible, the child's tribe(s) and/or tribal representative. The social worker must document the safety plan in the case record. Including the tribal representatives and other tribal service providers in safety plan development plays a crucial role in the success of the family by ensuring planning occurs to address the safety needs of the child. ([MPP section 31-127.23.](#)) Helpful considerations for social workers when an investigation leads to the emergency removal of a child, include, but are not limited to:

- Was a safety plan developed?
- Were the family, extended family, and the tribe, involved in the planning and development of the safety plan and planned interventions and services, including the identification of cultural supports and services?
- Does the plan include available culturally relevant services to address the immediate safety needs of the child?
- Does the plan support the family with active efforts to assist them in becoming stable to prevent removal?

The tribe's contribution to safety planning with the county CWS agency plays an important role to help stabilize families, reunite them more quickly, and support parents, guardians and Indian custodians of the child in developing necessary parenting skills to prevent future maltreatment, child welfare involvement and subsequent removals. Ensuring the child's safety is always the priority, therefore, if a county CWS agency is pending information from a tribe or waiting to hear back from the tribe, the development of the safety plan should not be delayed. For more information regarding the development and monitoring of safety plans, please refer to [ACL No. 17-107.](#)

Some safety plans may include the use of a voluntary placement intended to offer a short-term placement option with a relative, extended family member, or other person approved to safely care for the child. This can be arranged to offer short-term care or respite while the parent works to resolve the identified safety threat such as a legal

³ [WIC § 224.1 \(c\)](#): As used in connection with an Indian child custody proceeding, the terms "extended family member" and "parent" shall be defined as provided in Section 1903 of the federal ICWA. "Extended family" is defined by the law or custom of the Indian child's tribe. If there is no applicable law or custom, an extended family member is someone 18 years or older who is the child's grandparent, aunt or uncle, sibling, brother or sister-in-law, niece or nephew, first or second cousin, or stepparent. ([25 USC 1903 \(2\).](#))

matter, an unsafe residence, or other situation. For example, the county can work with the family and tribe, whenever possible, to create, document, and monitor a safety plan for the care of the child, such as: *The home has an identified safety hazard which creates an unsafe environment for a toddler. The parent, as part of their safety plan, can choose to have their child stay with a relative or establish an Indian custodianship while the parent is working towards remedying the unsafe situation.*

Safety plans involving voluntary out-of-home placement can be developed as part of an open case, utilizing a voluntary placement agreement. Voluntary placement agreements can also be utilized in these situations to allow, assuming all eligibility conditions are met, the family or extended family member to receive maintenance funds while the parent(s) works to mitigate safety concerns. A parent, guardian or Indian custodian may voluntarily place an Indian child in foster care by signing the [SOC 155C](#), which must be certified by a judge. If there is reason to know the child is an Indian child, all protections of the ICWA apply. For more information on voluntary placement, please refer to the [MPP section 31-430](#). Please refer to [ACL No. 23-46](#) for additional guidance on the affirmative duty to engage in ongoing inquiry into whether the child is or may be an Indian child to determine whether there is reason to know the child is an Indian child. ([WIC section 224.2](#).)

A safety plan must not be used to avoid opening a case. As clarified in [ACL No. 17-28](#), referrals may remain open for up to a 40-day maximum timeframe. Per [ACL No. 17-107](#), safety plans are meant to be a short-term solution to mitigate safety threats and keep children in their homes. Additionally, the safety plan must be documented to ensure the plan is memorialized, signed by all individuals involved, and available to all parties. If the identified safety threats have not been resolved by the end of the investigation, the social worker must decide if family maintenance or family reunification services are necessary to ensure the child's safety. If a case is opened at the conclusion of the investigation, the safety plan must be provided to the ongoing case carrying social worker and all remaining interventions will be incorporated into the case plan, per Structured Decision Making guidelines.

These interventions allow for a temporary safety plan for the child and allows the parent/caregiver time to take care of any immediate safety concerns that may otherwise warrant opening a case and effecting a removal. Efforts such as these help increase safety and reduce trauma experienced by the child and family, and assists with establishing immediate supports and services to keep the child with their family, or promptly return the child to their home.

It is important to understand Indian custodianships are plans that Indian parents can choose to make under tribal law or custom. County CWS agencies lack authority to force a parent with legal custody to initiate an Indian custodianship or other placement

arrangement with a relative to avoid child welfare involvement. Such action is not appropriate and may deprive parents of important reunification services, and caregivers of financial support in the care and support of the child.

Even though parents or Indian custodians consent to a voluntary placement, it is critical to ensure that these decisions are truly voluntary. Consent means the parent, guardian, or Indian custodian is acting with free will and not under threat of removal, and in the case of an Indian child, per [WIC section 16507.4\(b\)\(3\)](#). Such a consent must be reviewed by the court, even if the placement is short-term. Under the terms of such a consent, the parent or Indian custodian may withdraw their consent for any reason at any time and have the child returned. ([WIC section 16507.4\(b\)\(3\)\(C\)](#).)

For temporary situations that only last for a few days, the court review may occur after the placement period has ended. For temporary custody arrangements for Indian children, the [ICWA 101 Agreement of Parent or Indian Custodian to Temporary Custody of Indian Child](#) form must be completed and signed after a judge has explained the terms and conditions of the consent. Further information explaining the requirements of involuntary and voluntary child custody proceedings⁴ will be released in a subsequent ACL.

EMERGENCY REMOVAL

The ICWA allows for the emergency removal⁵ of Indian children when removal is necessary "to prevent imminent physical damage or harm." ([WIC section 306\(c\)](#).) In such cases, the child may be immediately removed even though important ICWA provisions have not yet been applied. At first contact, social workers perform inquiry as described in [ACL No. 23-46](#). At any time after this determination, if new information is disclosed, including that the tribe has changed its enrollment criteria, inquiry should restart to determine whether the child is an Indian child so ICWA will apply.

Active Efforts Prior to an Emergency Removal

When there is reason to know the child is or may be an Indian child, active efforts are required. Active efforts require the social worker to make all necessary contacts to

⁴ [MPP § 31-002 \(v\)\(4\)](#): "Voluntary proceeding" means an Indian child custody proceeding that is not an involuntary proceeding, such as a proceeding for foster-care, preadoptive, or adoptive placement that either parent, both parents, or the Indian custodian has of their free will without a threat of removal by a State agency, consented to for the Indian child, or a proceeding for voluntary termination of parental rights. The parent or Indian custodian's consent must be executed in writing and certified by a judge as described in [MPP section 31-430](#).

⁵ [MPP § 31-002 \(e\)\(7\)](#): "Emergency removal" in the case of an Indian child means the immediate physical removal of the child from the parent(s) or Indian custodian(s) that is necessary to prevent imminent physical damage or harm to the child.

identify and engage the child's tribe. The social worker shall conduct an investigation, with the tribe, whenever possible, in order to identify and locate all relatives as outlined in [WIC section 309](#) and any extended family members. In addition, active efforts require consulting and collaborating with the child's tribe as soon as possible, including, at the social worker's initial contact with the Indian family and child, and to jointly complete safety and risk assessments and make emergency removal decisions. Active efforts require collaborating with the tribe and tribal representative on all aspects of the case, including:

- Completion of the child welfare investigation activities,
- Review of documents, video, or audio tapes, photographs, and exhibits admitted into evidence at juvenile court hearings (see [ACL No. 18-140](#)),
- Assessments,
- Placement decisions and approvals,
- Child and Family Teams (CFT),
- Placement preservation strategies,
- Conflict resolution strategies,
- Service delivery, and
- Identifying necessary services and supports for the child and family.

Per [WIC section 224.1\(f\)](#), active efforts are tailored to the facts and circumstances of each individual case. Active efforts must be made prior to taking custody of an Indian child from their parents or Indian custodian unless emergency removal is necessary to prevent imminent physical damage or harm to the child. ([WIC section 306\(f\)\(4\)](#).) To build successful relationships, the county social worker must engage in honest, open communication and employ a culturally appropriate trauma-informed approach when working with the family and tribe. Active efforts will be discussed further detail in a forthcoming ACL.

Decisions made regarding the Indian family should reflect the position and interest of both the tribe and the family. In the event of an emergency removal involving an Indian child, the county CWS agency is encouraged to develop protocols or agreements with local tribes to establish immediate lines of communication to collaborate and provide the case information to the tribe. Some counties have already developed written ICWA protocols in partnership with local tribes or other tribal stakeholders, concerning how emergency issues are to be handled. Social workers should determine if their county has such a protocol in place and comply with any additional policies or procedures concerning emergency removals contained therein.

Contact with Tribe Prior to Emergency Removal

Contact with the tribe shall at a minimum, include telephone, facsimile, or electronic mail, and include sharing information identified by the tribe as necessary for the tribe to make a membership or eligibility determination, as well as information on the current status of the child and the case. ([WIC section 224.2\(e\)\(2\)\(C\)](#).) The tribe must receive notification of the emergency removal, notice of hearing, and be included in any next steps pertaining to the case. ([WIC sections 224.3](#) and [290.1](#).) This includes collaborating with the tribe and tribal representative on completion of the child welfare investigation and sharing pertinent information regarding the investigation.

Tribes and their representatives must be treated equally as other governmental entities. The tribe, or officially designated agencies by the tribe, such as a service provider, shall have access to confidential information related to child welfare services as needed in the performance of their duties, consistent with [WIC section 827](#). Access to information regarding the child, the family, and the case is necessary to share and facilitates meaningful collaboration with the tribal representatives. It is therefore essential that the county share as much information with the tribe or tribal representative as possible, as early as possible, to ensure the best possible outcome for a child. A nonfederally recognized tribe⁶, at the request and at the discretion of the judge in the dependency matter, may participate in the case. ([WIC section 306.6](#).) For further clarification on the tribe's right to access child welfare records, please refer to [ACL No. 18-140](#).

Contact with Tribe During an Emergency Removal

Active efforts are affirmative, thorough and timely efforts intended primarily to maintain or reunify an Indian child with their family. Examples of active efforts once the child is subjected to an emergency removal or placement may include but are not limited to those listed in [WIC section 224.1\(f\)](#), and the following examples:

- Conduct a comprehensive assessment in partnership with the tribe, the parents, Indian custodians and extended family members, of the circumstances of the family, with a focus on reunification.
- Identify culturally appropriate services and invite representatives of the Indian child's tribe and other tribal service providers to participate in providing support to the family.
- Offer and employ all available and culturally appropriate family preservation strategies.

⁶ [Following the Spirit of the ICWA](#): A guide to understanding the benefits of providing culturally appropriate services to Native American families from non-federally recognized tribes within the juvenile dependency and delinquency systems.

- Working with the tribe in identifying the most appropriate placement and approval type for the family, including complying with placement preferences, as outlined in [WIC section 361.31](#).

Consistent with [WIC section 309](#), a social worker must immediately release a child in temporary custody to the custody of the child's parent, guardian, Indian custodian, or relative unless one or more identified conditions exist. Note that in the case of an Indian child, a social worker must immediately release a child to the custody of their parent(s), legal guardian, or Indian custodian unless continued detention of the child is necessary to prevent imminent physical damage or harm to the child, and there are not reasonable means by which the child can be protected if maintained in the physical custody of their parent(s), legal guardian, or Indian custodian. When the child has been detained⁷ by the court, any party may request an ex-parte hearing prior to disposition to present evidence to the court that the emergency placement is no longer necessary to prevent imminent physical damage or harm to the child. ([WIC section 319.4](#).) The court form [ICWA-070](#) (Request for Ex-Parte Hearing to Return Physical Custody of an Indian Child) is available for this purpose.

EMERGENCY PLACEMENT

The child's emergency placement must comply with the ICWA placement requirements set forth in [WIC section 361.31](#). It is imperative that counties consider all options that meet the ICWA placement preferences, including reaching out to other family members and the tribe to see if the Indian child can be immediately placed with a non-offending parent, relative, extended family member, tribally specified placement, or other preferred placement, including a non-relative extended family member (NREFM). The county CWS agency or probation department⁸ must collaboratively seek out the tribe's preferences and jointly identify placements for all individuals who meet this criteria, including those individuals not necessarily related to the child by blood or marriage, but who qualify as "extended family members" under tribal law or custom.

⁷ Per the [California Rules of Court](#), "Detained" means any removal of the child from the person or persons legally entitled to the child's physical custody, or any release of the child on home supervision under WIC section [628.1](#) or [636](#). A child released or placed on home supervision is not detained for the purposes of federal foster care funding.

[WIC section 319 \(d\)](#) further clarifies if the court knows or there is reason to know the child is an Indian child, the court may only detain the Indian child if it also finds that detention is necessary to prevent imminent physical damage or harm.

⁸ [Probation Department Requirements](#): ICWA's requirements (other than inquiry) apply only to [WIC section 602](#) cases where the child is in foster care or at risk of entering foster care AND one of the following: 1. The proceeding arises out of conduct which would not be criminal if committed by an adult; 2. The court is setting or considering setting a hearing to terminate parental rights; or 3. The court makes a specific finding that the foster care placement is based entirely on conditions within the child's home. In these cases, probation departments must comply with all the substantive ICWA requirements in addition to the duties of inquiry, further inquiry and protection of legal rights of all Indian children in foster care.

At times, the most appropriate placement may already be an approved resource family or tribally approved home (TAH). However, if an available and willing relative or extended family member comes forward, the individual must be assessed for possible emergency placement pending approval of the home. An emergency placement, pending home approval, can occur under the following circumstances:

- When a child has been taken into custody. ([WIC section 309](#)); or
- When the sudden unavailability of a foster caregiver requires a change in placement for a dependent child. ([WIC section 361.45](#)):
 - Joint discussions should occur immediately if a change in placement may occur.
 - Immediate notice shall be provided to the tribe or tribal representative.
 - At a minimum, information shall be shared timely with the tribe or tribal representative(s), documenting every placement change.
- When a minor is under the supervision of the probation department. ([WIC section 727.05](#)).

The county CWS or probation officer, in consultation with the members of the CFT, which shall include a tribal representative in the case of an Indian child, determines the child's foster care placement poses an imminent risk to the health or safety of the child, youth, other children, or others in the home or facility ([WIC section 16010.7](#)) or the members of the CFT agree to waive the requirements of the placement preservation strategies.

Prior to making an emergency placement of an Indian child pending approval of the home, the CWS agency or probation department must initiate an assessment of available and willing relative or extended family members to determine their suitability for emergency placement in accordance with [WIC sections 361.4](#) or [727.05](#). The court shall order the parent to disclose to the social worker, the names, residences, and any known identifying information of any maternal or paternal relatives of the child. ([WIC section 319\(h\)\(3\)](#).) Working collaboratively to identify potential emergency placements with the child's tribe is required. Potential placements should be in the least restrictive setting and in close proximity to the child's home, including exploring existing TAHs.

In addition, pursuant to [Senate Bill 354 \(Chapter 687, Statutes of 2021\)](#), the court may authorize the placement of a child on an emergency basis in the home of a relative, notwithstanding the placement recommendation of the county placing agency and regardless of the status of any criminal record exemption or resource family approval, if the court finds the placement does not pose a risk to the health and safety of the child. ([WIC section 361.4\(b\)\(6\)](#).) The social worker shall initiate the assessment

([WIC section 361.3](#)) of any relative to be considered for continuing placement.
([WIC section 319](#).)

Prior to the emergency placement of a child, the social worker or probation officer must use due diligence in doing the following:

- Work collaboratively to identify potential emergency placements with the child's tribe, including exploring existing TAHs and/or assessing a relative, extended family member or NREFM as an emergency placement.
 - In consultation with the child's tribe, the child may be placed in an approved home without delay.
- Conduct an in-home assessment to determine the relative or extended family member's ability to safely care for the child's needs.
 - In a situation where a removal must happen after hours or on weekends, county workers should place the child according to the tribal representative's recommendations when consistent with all requirements applicable to the emergency placement of an Indian child.
 - The social worker or probation officer must coordinate with the tribe or tribal designee to collaboratively conduct the mutually agreed upon in-home assessment to ensure there are no imminent health and safety risks for placement on an emergency basis and to ensure the prevailing social and cultural standards of the home are met.
- Conduct a name-based criminal record check through the California Law Enforcement Telecommunications System and a check of allegations of prior child abuse or neglect. This is available to county CWS agencies 24-hours a day, seven days a week.

The social worker or probation officer should discuss the relevant results of these checks with the tribal representative to determine if there are any potential risks to the health and safety of the Indian child in the placement under consideration. The existence of criminal history is not a sole determinant of whether emergency placement should or should not occur, but the existence of certain prior convictions will require court authorization prior to emergency placement with the individual, consistent with [WIC section 361.4\(b\)](#). Criminal record exemptions are not a part of emergency placements.

Following the emergency placement of the child, the social worker or probation officer shall do the following:

- Conduct a CFT meeting, including the tribal representatives, following the emergency placement, as soon as is feasible, to discuss the safety plan and reunification with all parties involved.
 - Tribal and county staff have reported positive outcomes when they meet 15 minutes prior to the formal CFT meeting to discuss recommendations and options before the family is present. Decisions should not be made without the family present, but meeting several minutes beforehand, whenever possible, may streamline the county/tribal communications and improve overall teaming outcomes.

Please refer to Attachment B for further information on Emergency Placement Requirements for Indian Children.

PLACEMENT PREFERENCES

It is imperative to have contact with the child's tribe as soon as possible after initial contact with the family to meet the ICWA placement preference requirements. Placement of an Indian child must always be discussed and completed in partnership and collaboration with tribal representatives and extended family members as part of active efforts and to ensure ICWA placement preferences are being applied. Engagement with the child's tribe promotes stable, culturally relevant placements consistent with the applicable order of placement preference.

Once the county has taken temporary custody of or detained a child, the county must place the child in accordance with the ICWA's placement preferences. ([WIC section 361.31 \(b\)](#).) These preferences are presumed to be in the Indian child's best interest because they protect and promote the child's connection to extended family, their culture and their tribe. Tribal engagement also ensures the placement preferences are applied in a manner consistent with the prevailing social and cultural standards of the tribe, as required by [WIC section 361.31 \(f\)](#).

With the help of the tribe, active efforts can assist in locating a preferred placement for the Indian child and to find a culturally appropriate home. These efforts to locate a culturally appropriate placement must be affirmative, active, thorough, and timely, in compliance with ICWA requirements and [WIC section 224.1](#). The ICWA placement preferences apply regardless of whether the child's tribe intervenes in the case or whether the child's tribe can identify a preferred placement home.

There are several ways a social worker or probation officer shall meet these placement requirements, including:

- Identifying, notifying, and inviting representatives of the Indian child's tribe to participate in placement efforts.
- Including the tribe in the CFT meeting to contribute to the development of the case plan, as approved by the tribal social worker, which includes planning for services and placement of the child.
 - While the CFT meeting is not required prior to the emergency removal, it is required within 30 days of entry into foster care in the case of an Indian child.⁹ However, it can be beneficial to coordinate the CFT directly following an emergency removal, particularly when the child's initial emergency placement deviates from the ICWA placement preferences.
 - As mentioned above, to promote a quality CFT meeting, the county should, whenever possible, meet with the tribe 15 minutes prior to the CFT. This allows the county and tribe to address possible placement and services and whether a safety plan can be created. This allows for a mutually prepared meeting which will further benefit the child and family.
- Conducting a diligent search for the child's extended family and including them in the CFT upon the request of the child/youth, or tribe for placement planning.
- Working collaboratively with tribal representatives to jointly assess and approve a home for placement.
- Identifying necessary community resources that benefit the child and family, including tribal programs and services and other culturally responsive services.
- Having a CFT facilitator that understands and supports the role of the tribe.

The [MPP section 31-405.121](#) states that in the case of an Indian child, active efforts shall be made to comply with the ICWA placement preferences and standards as required by [MPP section 31-420.3](#). When an Indian child is temporarily removed on an emergency basis from the physical custody of their parents or Indian custodian, the child's placement shall be consistent with the following placement preferences in descending order pursuant to [WIC section 361.31](#):

1. A member of the Indian child's extended family.
2. A foster home licensed, approved, or specified by the Indian child's tribe.
3. An Indian foster home licensed or approved by an authorized non-Indian licensing authority.
4. An institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the child's needs.

If the tribe has established a different order of placement preference, the CWS agency or probation department must follow the order of preferences established by the tribe, so long as the placement is the least restrictive setting appropriate to any special needs

⁹ [ACL No. 22-35](#): Timing and Frequency of Child and Family Team Meetings

of the child. Consistent with the preferences listed above, the preferences of an Indian child, if they are old enough, or of the parent, shall be considered when appropriate. The prevailing social and cultural standards of the Indian community, as confirmed by the tribe, shall be applied in meeting the placement preference requirements.

When no preferred placement has been identified despite diligent efforts, active efforts to find suitable placements within those priorities shall be documented in detail. In addition, active efforts must be made and documented to place the Indian child with a family committed to enabling visitation with the child's parents, Indian custodian, siblings, and extended family as well as participation in cultural/ceremonial events of the child's tribe. ([California Rules of Court, Rule 5.485\(b\)\(8\).](#))

Additionally, each time the child is moved from one placement to another, the placement requirements of [WIC section 361.31](#) must be met and the tribe and child's parents or Indian custodian must be notified in writing. Each placement must be documented as well as the active efforts the county placing agency has made to comply with the order of preference. ([WIC section 361.31\(m\).](#))

EMERGENCY PROCEEDINGS/HEARINGS

At an emergency proceeding or initial hearing pursuant to [WIC section 319](#), the court must find the Indian child has been placed according to the placement preferences or that good cause exists to deviate from those preferences. The CWS/probation agency must present evidence that illustrates the active efforts made to meet the placement preferences and, when applicable, why the child was not placed according to the preferences. The court will need "clear and convincing" evidence to find good cause for deviating from the placement preferences, so it is important that efforts be well documented. ([WIC section 361.31 \(h\)\(i\).](#))

For all placement options, the social worker or probation officer must follow the requirements outlined in the [MPP section 31-410.8](#). When placing an Indian child, all of the following must be applied:

- Placement must be in the least restrictive setting that is most like a family environment that can meet any special needs the child may have.
- Placement must be in close proximity to the child's home, also considering any special needs of the child.
- The social and cultural standards of the Indian child's tribe and community shall be maintained and applied in meeting the placement preferences.

Good cause to deviate from the placement preferences may be based on:

- The request of one or both of the Indian child's parents if they attest they have reviewed the compliant placement options;
- The request of the child is of sufficient age and mental capacity;
- The presence of a sibling attachment that can only be maintained by a particular placement;
- The extraordinary needs of the child; or
- The unavailability of a suitable placement after a court determination that a diligent search was completed.

The court will need "clear and convincing" evidence to find good cause for deviating from the placement preferences, which can be established through well documented efforts by the county social worker. ([WIC section 361.31\(i\)](#).) Socioeconomic status of a placement or ordinary bonding or attachment with a nonpreferred placement does not provide good cause to deviate from the statutory placement preferences. Active efforts shall include the county CWS agency discussing with the tribe the reasons for the deviation from the ICWA placement preferences and consulting with the tribe to appropriately place the child.

EXEMPTIONS FROM PLACEMENT CHANGE REQUIREMENTS

Abrupt placement changes can negatively impact a child's well-being and sense of security. The [AB 2247](#) (Chapter 674, Statutes of 2018) added [WIC section 16010.7](#), which aims to preserve and strengthen the placement of a child or youth whenever possible. Pursuant to [WIC section 16010.7](#), prior to making a change in the child's placement, a county CWS agency or probation department shall develop a placement preservation strategy in consultation with the child's CFT, which should include a tribal representative for an Indian child. If, after the implementation of the placement preservation strategy, the caregiver still requests a placement change, the county CWS agency or probation department must provide notice to the child's parent, caregiver, attorney and the child, if over the age of 10, at least 14 days prior to the change. The tribe must also be notified, using the method of communication agreed upon between the tribe and the county.

However, AB 2247 also permits the CWS agency to make a placement change without complying with the requirements of [WIC section 16010.7](#) subdivision (b) (placement preservation strategy) and (e) (placement change notice) in either of the following circumstances:

- It is determined that remaining in the existing placement or providing prior written notice of that placement change poses an imminent risk to the health or safety of the dependent foster youth or other children in the home or facility; or

- If the dependent foster youth's CFT and the dependent foster youth, if they are 10 years of age or older, or their representative if they are less than 10 years of age, unanimously agree to waive the placement change requirements.

When an Indian child is placed on an emergency basis outside of the ICWA placement preferences, the placement preservation strategy requirement should not apply if a child is moved out of the emergency placement into a home that complies with the ICWA placement preferences. For more information related to placement change requirements, please refer to [ACL No. 19-26](#).

TRIBALLY APPROVED HOMES

A TAH is a home that has been licensed or approved by an Indian child's tribe or a tribal organization designated by the Indian child's tribe, for foster or adoptive placements of an Indian child using standards established by the tribe. A TAH is not required to be approved by the state or county and is considered equivalent to a state or county-licensed or approved home. In other words, if a tribe chooses to complete the TAH process for a home, that home will not be subject to the state's Resource Family Approval process. All TAHs must meet the tribe's social and cultural standards consistent with federal minimum health and safety standards and other federal requirements including criminal background checks. ([Health and Safety Code sections 1522 and 1522.1](#).)

If a federally recognized tribe or tribal agency has been approved by the Department of Justice (DOJ) to receive summary criminal and child abuse history information for the purpose of approving a tribal home for foster or adoptive care, it has the authority to conduct its own background checks. A tribe/tribal agency approved by DOJ has the authority to conduct a background check on individuals specified in [WIC section 10553.12](#). If a tribe is not authorized to conduct their own background check, or if an authorized tribe chooses not to do so, the tribe can request the county of jurisdiction or CDSS to conduct the background check on the tribe's behalf. It is critical that in every instance, the county CWS agency shall inquire whether the tribe will conduct the background check or if the county CWS agency should conduct the background check on their behalf. It is in the best interest of the Indian child for county CWS agencies to make every effort to be accommodating and supportive to the tribe.

Although counties are generally required to share ICWA case information with the child's tribe(s), the Criminal Offender Record Information (CORI), received from the DOJ is confidential and cannot be shared with the tribe. Though the CORI cannot be shared, a summary of the results of the county's background check review can be shared with the tribe(s) for the purposes of approval, transfer, and placement.

As a reminder, an existing TAH may be the most appropriate placement for a child. A tribe can designate the TAH as a temporary placement while the tribe and county work to identify a longer-term placement, if needed. However, existing TAHs do not need to complete an assessment pursuant to [WIC section 361.4](#), intended for placements prior to approval.

A tribe may conduct their own fingerprint-based background check to complete the TAH process if authorized to do so. A list of currently authorized tribes is available on CDSS' Tribal Background Check Resources and Information website. This site also provides information to tribes interested in applying for DOJ authorization. Please refer to [ACL No. 19-71](#) for more information on TAH approvals, documentation, and federal requirements.

COPIES AND TRANSLATIONS

Forms referenced in this letter are available on the [CDSS Forms/Brochures](#) webpage. When CDSS completes all translations of a form, they are posted on the [Translated Forms and Publications](#) webpage. When made available by CDSS, forms translated into an individual's preferred language must be provided to the individual pursuant to [MPP section 21-115.2](#). For questions on translated materials, please contact Language Services at (916) 651-8876. If translations are not available, recipients who have elected to receive materials in languages other than English should be sent the English version of the form or notice along with the [GEN 1365-Notice of Language Services](#) and a local contact number.

Per [Government Code section 7290, et seq.](#), the County Welfare Departments (CWDs) must ensure that effective bilingual services are provided. This requirement may be met through utilization of paid interpreters, qualified bilingual employees, and qualified employees of other agencies or community resources. These services must be provided, free of charge, to the applicant/recipient. If CDSS does not provide translations of a form, it is the county's responsibility to read and interpret the form if an applicant or recipient requests it.

Additionally, the CWDs must provide auxiliary aids and services to persons who are deaf or hearing impaired, or persons with impaired speech, vision, or manual skills, where applicable. More information regarding provisions for services to applicants and recipients who have limited English proficiency or who have disabilities can be found in [MPP section 21-115](#) and [ACL No. 19-45](#).

If you have any questions or need additional guidance regarding the information in this letter, please contact the Family Centered Safety and Support Bureau at childprotection@dss.ca.gov.

All County Letter No. 23-64
Page Eighteen

Additionally, for specific questions related to placements, please contact Reunification-Permanency@dss.ca.gov. For specific questions related to guardianship, Foster Parent College, caregiver support, etc., please contact CaregiversforYouth@dss.ca.gov.

For specific questions related to tribally approved homes, please contact TAH@dss.ca.gov. For specific questions related to background checks, please contact tribalbackgroundchecks@dss.ca.gov.

Sincerely,

Original Document Signed By:

ANGIE SCHWARTZ
Deputy Director
Children and Family Services Division

cc: All Federally Recognized Tribes

Attachments

**INDIAN CHILD WELFARE ACT (ICWA) – EMERGENCY REMOVAL/PLACEMENT
COMPLIANCE FREQUENTLY ASKED QUESTIONS¹⁰**

What if there is an emergency that requires removal of an Indian child?

Unless circumstances do not permit, the child's status as an Indian child should be immediately determined. Though a child may be identified as being of any one or more race or ethnicity groups, ICWA applicability is based upon the Indian child's political status as determined by the tribe. To determine the child's status, a case worker may ask:

- *Which of the following do you consider yourself to be?*
 - *Asian American, Black/African American, American Indian or Alaska Native or Native American, White, Latino/a?*
 - *Are you, your child, or the child's other parent a member of a tribe or is anyone in your family a member of a tribe?*
 - *Where do you reside?*

An emergency removal of any Indian child can be taken only if:

- The Indian child is in danger of imminent physical damage or harm.

The emergency removal must be terminated when removal is no longer necessary to prevent imminent physical damage or harm to the child.

When Can an Indian Child Be Removed from the Home?

To remove an Indian child, the state must prove (and case records should document):

- The continued custody of the child by the parent or Indian custodian will result in serious physical or emotional damage to the child.
 - Structural issues beyond the control of the parent, such as poverty, are not sufficient cause to remove a child.
- If there is reason to know a child is an Indian child, active efforts are required to place the child during emergency care in a setting that follows ICWA placement preferences.
- Active efforts were made to support the family in overcoming the challenges that presented imminent risk of serious physical or emotional damage to the child.

¹⁰ Derived from excerpts taken from [A Guide to Compliance with the Indian Child Welfare Act](#), National Indian Child Welfare Association

- The case record cannot simply state such efforts were unsuccessful, but must also document the specific efforts and reasons why they were unsuccessful.

Where should an Indian child be placed if removal from the home is necessary?

If it is known or there is reason to know a child is an Indian child, the child should be placed in the setting that:

- Is the least restrictive placement that meets any special needs the Indian child may have;
- Is most like a family;
- Is within a reasonable proximity to the Indian child's family.

The ICWA placement preferences must be followed unless there is good cause to place the child elsewhere or the tribe has established a different placement preference order. The child's placement shall be consistent with the following placement preferences in descending order. ([WIC section 361.31.](#)):

1. Member of the child's extended family;
2. Foster home licensed, approved, or specified by the child's tribe;
3. Indian foster home, licensed or approved by the state or other non-Native licensing authority;
4. Institution for children approved by an Indian tribe or operated by an Indian organization that meets the child's special needs.

The case worker should contact the tribe to ask if they have a different placement preference.

The case worker must perform a diligent search to comply with ICWA's placement preferences and document active efforts to comply with the placement preferences.

This should include, at minimum:

- Contact with tribe's representative;
- Contact with extended family members;
- Search of state and county lists of approved resource families;
- Contact with other tribes and Native organizations with available placement resources.

Note: ICWA placement preferences apply regardless of whether the child's tribe intervenes in the case or whether the child's tribe can identify a preferred placement home.

When placing an Indian child, what should be documented?

County CWS agencies shall document the placements of the child and active efforts to comply with placement preferences.

If placement preferences have not been followed, active efforts to find suitable placements within those priorities shall be documented in detail.

What if it is necessary to move the child to a new placement?

If the Indian child is to be moved to a new placement or if the foster family plans to move, the child's parents or the Indian custodian must be notified in writing. The tribe must be notified using the method of communication agreed upon between the tribe and the county. Workers must follow placement preferences outlined above, unless the child is returned to the parents or Indian custodian.

Good cause to deviate from the placement preferences for one placement does not automatically apply to future placements; the placement preferences must be followed for each new placement of an Indian child.

EMERGENCY PLACEMENT APPROVAL REQUIREMENTS
PLACEMENT OF INDIAN CHILDREN

Overview: Although county child welfare services (CWS) and probation agencies make emergency placement decisions for Indian children, a county must ensure there is early, often, and ongoing collaboration with the tribe regarding any and all decisions and determinations made on behalf of the child. The [WIC section 361.4](#) explicitly outlines the county CWS agency's responsibilities prior to making an emergency placement determination; [WIC section 727.05](#) explicitly outlines the probation agency's responsibilities prior to making an emergency placement determination. Requirements include ongoing communication and collaboration with the Indian child's tribe(s), explicitly defined as active efforts. ([WIC section 224.1 \(f\).](#))

Tribal ICWA Designated Representatives for notice purposes are located on the [Federal Register's List of Designated Tribal Agents](#) for Service of ICWA Notices or the [Bureau of Indian Affairs Online Tool for Designated Agents](#) for Service of ICWA Notices which can serve as an initial point of contact for inquiry purposes. The tribe may, however, have a different point of contact for emergency response in child welfare or probation matters and for enrollment matters. It is best for the county to have an established way to contact the tribe for emergency actions which is regularly and frequently updated.

A county CWS agency or probation department cannot use the California Law Enforcement Telecommunications System (CLETS) and/or Live Scan fingerprint checks as a basis to decide that they will not assess a relative, extended family member or a NREFM for placement or to decide that they will not process an application to become an approved placement. These checks cannot be completed other than in the circumstances authorized by statutes, outlined below, related to placement and approval processes.

Extended Family Member is defined in section 1903 of the ICWA:

"Extended family member" shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.

For all emergency placements, the CWS agency or probation department shall contact the Indian child's tribe immediately to discuss and coordinate planning for the child's placement so the child can be placed according to the ICWA placement preferences.

When a child is removed, the CWS agency or probation department shall engage in family finding efforts in accordance with [All County Letter No. 18-42](#), in addition to collaborating with the child's tribe(s) to identify an appropriate emergency placement for

the child. The county shall initiate an assessment of a relative, extended family member, or NREFM requesting emergency placement of the child. The county has the discretion to place the child with that relative/extended family member/NREFM prior to approval in accordance with the process outlined in [WIC section 361.4](#) and [WIC section 727.05](#) and summarized as follows:

Conduct an in-home inspection to assess the safety of the home and the ability of the relative/NREFM/extended family member to care for the child's needs.

In the case of an Indian child, active efforts require the in-home inspection be done in collaboration and consultation with the child's tribe(s) at the earliest point of contact possible. The prevailing cultural and community standards of the Indian child's tribe shall be applied in meeting placement preferences, pursuant to [WIC section 361.31](#). Please note this in-home inspection for an emergency placement is separate and distinct from the Tribally Approved Home (TAH) or Resource Family Approval (RFA) home assessment.

Practice Tip: If the tribe(s) is not available to conduct a joint in-person home inspection, the county and tribe(s) should explore ways for the tribe to participate virtually.

Conduct a criminal background check of all adults over 18 years of age residing in the relative's/NREFM's/extended family member's home:

- CLETS

Conducting a check of the CLETS.

- The county shall conduct a CLETS check on all persons over 18 years of age living in the home seeking emergency placement of the child.
- The county has the *discretion* to conduct a CLETS check on any other person over 18 years of age known to the county to be regularly present in the home (consultation shall occur with the tribe).
- The county has the *discretion* to conduct a CLETS check on any person over 14 years of age living in the home who the county believes may have a criminal record (consultation shall occur with the tribe).

Note: If the home is not already approved as a TAH or RFA, counties are required to conduct a CLETS check for purposes of an emergency placement pursuant to [WIC section 361.4](#) and [WIC section 727.05](#). In true collaboration, CLETS results should be discussed with the tribe prior to making a final determination on whether an emergency placement can occur based on the criminal history.

- If the CLETS information indicates the person has been convicted of a non-exemptible crime under [Health and Safety Code \(HSC\) section 1522](#), the child shall not be placed in the home on an emergency basis. (Please refer to the [Background Assessment Guide](#) for a list of state and federal non-exemptible crimes.)
 - The juvenile court may authorize an emergency placement with relatives, NREFMs, or extended family members in the case of an Indian child, regardless of the status of any criminal exemption request, if the court finds that the placement does not pose a risk to the health and safety of the child. ([ACL No. 22-33](#).)
- If the CLETS information indicates the person has been convicted of an exemptible crime under [HSC section 1522](#), the child may be placed in the home on an emergency basis only after the placement has been approved by the deputy director or director of the county welfare or probation department or their designee. However, a child may not be placed if CLETS indicates a conviction for the following exemptible crimes:
 - A misdemeanor conviction for [Penal Code \(PC\) section 261.5](#); or
 - A misdemeanor conviction for [PC section 314](#); or
 - A misdemeanor conviction for financial abuse of an elder as described in [PC section 368 \(d\)\(e\)](#).
- If the CLETS information indicates the person was arrested for a serious crime under [HSC section 1522\(e\)](#), the child shall not be placed on an emergency basis until an investigation has been completed and the deputy director or director of the county welfare or probation department or their designee, and the court, have considered the investigation results and approved the placement.

Conduct a check of allegations of prior child abuse or neglect concerning the relative/extended family member/NREFM and other adults in the home:

- Child Abuse Central Index (CACI) with the Department of Justice ([BCIA 4084](#))
 - If results indicate a MATCH on any of the individuals subject to this check, emergency placement MAY occur if the applicants prohibit any unsupervised contact between the children and the individual until further assessment is conducted by the county CWS agency.
- Child Welfare Services Case Management System (CWS/CMS)

Practice Tip: In true collaboration, CACI and CWS/CMS results should be discussed with the tribe prior to making a final determination on whether an emergency placement can occur based on the child abuse or neglect history.

Practice Tip: Although placement may be denied on an emergency basis, this does not mean the home cannot be approved under TAH or RFA. The relative or extended family member should not be dissuaded or prevented from moving forward with the RFA or TAH process and should be informed that a criminal background check process, including an exemption process exists.

IMPORTANT: An RFA or TAH criminal record exemption or clearance shall not be granted, nor shall an individual be required to begin the exemption process, based on CLETS results. An emergency placement by the county or the court does not mean that an individual has received a criminal record exemption or clearance to be approved as a TAH or Resource Family or to live or be regularly present in a Resource Family's home. Live scan fingerprint-based criminal history information is necessary to determine if the individual needs a criminal record exemption prior to home approval (e.g. RFA or TAH). Emergency placements are temporary and are intended to ensure children are placed as soon as possible with a safe relative, extended family member, or NREFM, which is one of the foundational components of ICWA.

It is critical for the county to discuss with the tribe if the emergency placement will continue as the chosen placement for the child and whether it continues to meet the ICWA placement preferences

The county CWS agency shall also discuss if the tribe will choose to move forward in approving the home as a TAH or if the home will be approved as an RFA home.